

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

VINCENT METAL GOODS

Employer

and

Case 4-RC-19535

TEAMSTERS LOCAL UNION 115, a/w
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a Delaware corporation, is engaged in the distribution of metal goods with headquarters in Minneapolis, Minnesota and a facility located at 2811 Charter Road, Philadelphia, Pennsylvania. The Philadelphia facility is the only facility involved in this proceeding. The Petitioner seeks to represent a unit of seven full time drivers working out of the Employer's Philadelphia facility. The Petitioner would exclude drivers Reggie Johnson and Tom Hudson asserting that, unlike the other drivers, they are not based at the Philadelphia location. The Employer takes the position that the only appropriate unit consists of its nine drivers and its 11 warehouse employees located at its Philadelphia facility. At the hearing, the Employer requested that the Board make a finding as to the supervisory status of Steve Amoratis and Tom Mantle for purposes of its "campaign efforts," but took no position as to their status. In its brief, the Petitioner took the position that Amoratis and Mantle are supervisors within the meaning of Section 2(11) of the Act. The Petitioner is willing to proceed to an election in a broader unit of all drivers and warehouse employees of the Employer.

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The Petitioner's name appears as amended at the hearing.

The Employer's Philadelphia facility is an 80,000 square foot rectangular facility on 10 acres of land. The administrative and sales office are in the front or south end of the building, while the remainder of the building is composed of the warehouse. The warehouse contains two drive-throughs which run the width of the building for loading and unloading trucks inside the warehouse. Between the drive-throughs is a storage area and a production area where orders are filled. Administrative and Warehouse Manager Alexander Duncan oversees all of the Philadelphia operations. Reporting to Duncan are Steve Amoratis and Tom Mantle, who hold the title of supervisor, and work a day and a night shift on a rotating basis overseeing both the drivers and warehouse employees.

There are a total of 11 warehouse employees. They unload trucks from vendors, take orders from customers over the telephone and fill orders and load and unload trucks of the Employer. They work on three shifts: 7:30 a.m. to 4:00 p.m., 10:30 a.m. to 7:00 p.m. and midnight to 8:30 a.m.

The seven drivers sought by the Petitioner routinely report to and depart from the shipping area at the Employer's facility and they punch a time clock. Four of them report to work at the Philadelphia facility at 5:00 a.m., two report to work at 6:00 a.m. and one reports to work at 6:00 p.m. All but one of these drivers have their trucks already loaded when they come to work. If the vehicle is loaded, they perform a pre-trip inspection, adjust the load in the truck if necessary, secure a tarp over the load, and proceed with their deliveries. Drivers are required to have a Class A commercial drivers license (CDL) required by the Department of Transportation to operate tractor trailers, and are required to fill out logs. Also, they are required to have Department of Transportation bi-annual physicals, and undergo random drug testing as well as post-accident drug testing. Warehouse employees are not subject to random drug testing and have no license requirements. When there is no driving work available for drivers, which occurs from three to seven times per year, drivers will work in the warehouse. Warehouse employees do not drive the Employer's tractor trailers other than to move them in or out of the building, and they are not required to have a CDL license to do so because they are moving the Employer's vehicles on the Employer's property.

The seven drivers sought by the Petitioner as well as the warehouse employees receive a base rate of \$14.53 per hour. Employees who work on the second shift earn a 20 cent differential and those working on the third shift earn a 30 cent differential. Raises, if granted, are given on an annual basis to drivers and warehouse employees. The record reflects that warehouse employees may earn five to ten hours of overtime per week, while at least one driver averages about 15 hours per week. Both drivers and warehouse employees are trained to operate forklifts, however, the record does not reveal how often drivers operate forklifts to load their trucks except for the testimony of the one driver whose truck is ordinarily not loaded for him by the time he reports to work. He testified that he often uses the forklift to load his truck himself or gets assistance from warehouse employees to do so. Fringe benefits, which include holidays, vacation time, a 401(k) plan, short and long term disability, life insurance, prescription and dental plans, and tuition assistance are the same for both warehouse employees and drivers. The warehouse employees and the seven petitioned-for drivers punch the same time clock, and they all wear the same Employer-provided uniform, safety shoes and safety glasses. The Employer's parking facilities and its lunch room are available for both drivers and warehouse employees, but drivers often take their breaks and meals at their discretion out on the road. All employees are similarly invited to participate in company sponsored activities.

The record reflects that no driver has ever transferred to a job in the warehouse. Three warehouse employees of the Employer transferred from the warehouse to perform driving work several years ago when the Employer changed its practice of using independent contractors for driving to using its own employees. At that time, the three individuals were required to go through training paid for by the Employer to qualify for the driver jobs. The record also discloses that petitioned-for drivers have contact with warehouse employees about one and one-half hours per day when the drivers are in the warehouse inspecting and tarping their trucks or loading or adjusting the load in their trucks.

Reggie Johnson is a shuttle driver and Tom Hudson is a delivery driver. Johnson and Hudson both drive tractor trailers and, like the petitioned-for drivers, are required to have Class A CDL licenses. Johnson, who lives in the Baltimore, Maryland area, reports to work at the Employer's Philadelphia facility around midnight. At that time, he records his hours but does not punch the time clock punched by the other drivers and the warehouse employees. Due to scheduling, he often loads his own truck, then drives it back to one of the Employer's Baltimore vendors. Hudson then picks up the truck from the Baltimore vendor at a later time and makes deliveries in the Baltimore-Washington DC area as well as Southeastern Pennsylvania. While Hudson does not report to the Philadelphia

facility and does not punch a time clock, he is required to call the Philadelphia facility after each of his deliveries. Johnson earns \$13.20 per hour and Hudson earns \$13.00 per hour. Administrative and Warehouse Manager Duncan testified that he recommended that the wages of Johnson and Hudson be increased to the same rate as that of the other drivers and warehouse employees, but at the time of the hearing that recommendation had not yet been implemented. Johnson and Hudson enjoy the same benefits and wear the same uniforms as the other drivers and warehouse employees.

It is well established under Board law that a union need not petition for the most appropriate unit where other units may also be appropriate. *Overnite Transportation*, 322 NLRB 723, 723-724 (1996); 325 NLRB No. 113 (1998). The Board requires only that the unit be an appropriate unit. The Board has found units of drivers to be appropriate where they perform significantly different functions, possess different skills and have insubstantial interchange with other employees. *Rinker Materials*, 294 NLRB 738, 739 (1989); *Laidlaw Waste Systems v. NLRB*, 934 F.2d 898, 137 LRRM 2631 (7th Cir. 1991), enf. 299 NLRB No. 124 (1990); *Gogin Trucking*, 229 NLRB 529, 538 (1977); *Giordano Lumber*, 133 NLRB 205, 206-207 (1961). Integration and contact among other employees and drivers does not mandate that all employees be included in the same unit. *Overnite Transportation*, supra, 325 NLRB No. 113, slip. op. at 1. Similarly, common supervision is but one factor, and has not been deemed sufficient to defeat the appropriateness of a driver-only unit. See *Rinker Materials*, supra, 294 NLRB at 739; *Giordano Lumber*, supra, 133 NLRB at 206-207. Further, the fact that one group of employees perform duties in common with the group sought by a petitioner is not sufficient to warrant their inclusion where the duties are of a different type or arise in a different work context. *Id.*

Based on the foregoing, I find that the drivers share a community of interest that is sufficiently separate and distinct from the warehouse employees to warrant a separate unit of the Employer's drivers. While drivers and warehouse employees do share the same benefits and the same base hourly rate, drivers have different terms and conditions of employment including different work schedules, overtime opportunities, and the ability to determine their own break times. Unlike the warehouse employees, they are required to possess CDLs, a factor that shows their special skills and minimizes the possibility of significant interdepartmental transfers. Warehouse employees spend their entire day at the warehouse whereas drivers are on the road making deliveries for all but an hour and one-half per day. While the record does not reveal separate supervision for the warehouse employees and the drivers, this fact, alone, is not dispositive. *Rinker Materials*, supra, 294 NLRB at 739. Based on the foregoing, I find that the Employer's drivers have separate responsibilities and working conditions from the warehouse employees and that a separate unit limited to drivers is an appropriate one.

As to the unit placement of Johnson and Hudson, the record reveals that driving and delivering to the Employer's customers are their primary responsibilities and, like the Philadelphia-based drivers, both possess Class A CDLs. Like the Philadelphia-based drivers, Johnson and Hudson spend most of their day away from the warehouse facility driving the Employer's trucks and delivering its product, and are under the general supervision of Duncan. That Johnson drives the Employer's truck to Baltimore and that Hudson does not physically report to the Philadelphia facility do not render their driving responsibilities distinguishable from those performed by the petitioned-for drivers. In these circumstances, I find that Johnson and Hudson share a community of interest with the petitioned-for drivers of the Employer, and I shall include them in the unit.

With respect to the supervisory status of Steve Amoratis and Tom Mantle, unlike the warehouse employees and drivers, Amoratis and Mantle are salaried employees. Unlike the drivers and warehousemen who wear shirts with a blue stripe, Amoratis and Mantle wear white shirts without a stripe but with their names printed on the shirt. They do not play any role in the hiring or firing of employees, the granting of wage increases, the transfer of employees from one shift to the other or the lay off of employees. There was no record evidence that Amoratis has any role in the discipline of employees. There was conflicting testimony with respect to Mantle's role in the discipline of employees. Duncan testified that Mantle has no authority to discipline employees independently, and must report infractions to Duncan. According to Duncan, Mantle will tell him about a certain infraction and then Duncan directs Mantle to investigate the matter, report back to Duncan and then issue a particular discipline. Employee Ed Umberger testified that on one occasion he received a written warning from Mantle for not obeying a certain order. According to Umberger, Mantle later removed the warning, once Umberger obeyed the order. Umberger also testified that Duncan was not present when Mantle issued and withdrew the warning. There is no indication in the record as to whether Mantle discussed this incident with Duncan. Amoratis and Mantle do not have the authority to sign off on employee time cards but they do have the authority to permit employees to leave early.

Amoratis and Mantle are responsible for building security when they are on duty and, depending on the work flow of other employees, they perform warehousemen job functions.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Alaska Medical Center*, 320 NLRB 717, 725 (1996), enf. 121 F.3d 548, 156 LRRM 2001 (9th Cir. 1997); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Alaska Medical Center*, supra, 320 NLRB at 725; *Juniper Indus.*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574, 146 LRRM 2321, 2322 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. *Providence Alaska Medical Center*, supra, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Indus.*, supra, 311 NLRB at 110. The authority effectively to recommend “generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation is ultimately followed.” *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS*, 318 NLRB 70 (1995), enf. mem. 101 F.3d 107, 153 LRRM 2704 (2nd Cir. 1996), cert. denied 117 S.Ct. 68, 153 LRRM 2736 (1996), citing *NLRB v. Lindsay Newspapers*, 315 F.2d 709, 712 (5th Cir. 1963); *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enf. 961 F.2d 1578, 140 LRRM 2120 (6th Cir. 1992). Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *East Village Nursing Center v NLRB*, 160 LRRM 2342, 2345–2346 (D.C. Cir. 1999); *Store Employees Local 347 v. NLRB*, 422 F.2d 685, 71 LRRM 2397, 2399–2400 (D.C. Cir. 1969); *NLRB v. Security Guard Services*, 384 F.2d 143, 66 LRRM 2247–2250 (5th Cir. 1969), enf. 154 NLRB 8 (1965); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). The burden of establishing supervisory status is on the party asserting that such status exists. *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993); see *Bennett Indus.*, 313 NLRB 1363 (1994).

Based on the foregoing, I find that there is insufficient evidence to establish that Amoratis and Mantle are supervisors within the meaning of Section 2(11) of the Act. Amoratis and Mantle are not involved in the hiring process; do not transfer, layoff or discipline employees, and do not otherwise possess any primary indicia of supervisory status. Amoratis and Mantle also spend all of their time in the warehouse and they do not do any driving for the Employer. Accordingly, I find that they do not share a sufficient community of interest to warrant inclusion in the unit with the drivers.

Based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer from its Charter Street, Philadelphia, Pennsylvania facility, excluding warehouse employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,² subject to the Board's

² Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its

Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**TEAMSTERS LOCAL UNION 115, a/w INTERNATIONAL BROTHERHOOD
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LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the *full* names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **March 17, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **March 24, 1999**.

Dated March 10, 1999

at Philadelphia, PA

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

177-8520-0800
440-1760-6240

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